

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22590
Docket Number MW-22417

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Bridgeman Helper R. C. Cook on September 7, 1976 was unreasonable, without just and sufficient cause and was thereby arbitrarily and capriciously imposed (System File 12-39 (77-3) J1/C-4 (13)-RCC).

(2) Claimant Cook shall be returned to service with seniority, vacation and all other rights unimpaired and he shall be compensated for all wages lost."

OPINION OF BOARD: Claimant was charged with violating Rule 18 of the Seaboard Coast Line Railroad Company's book of Safety Rules for Engineering and Maintenance of Way employees which reads as follows:

"18. Disloyalty, dishonesty, desertion, intemperance, immorality, vicious or uncivil conduct, insubordination, sleeping on duty, incompetency, making false statements, or concealing facts concerning matters under investigation will subject the offender to dismissal."

An investigative hearing was held on August 27, 1976, at which time, claimant was found guilty of failing to advise Carrier on the pre-employment application designated Form MED-2 that he had previously sustained fractures of both ankles and he was dismissed from service, effective September 7, 1976.

In support of its position, Carrier contends that claimant would not have been hired had he furnished this information at the time he completed this form on August 6, 1973 and avers that its termination decision was justified. It noted the relevancy of our holding in Third Division Award 18475 and asserted that it was on point with this dispute. In that case, we said in pertinent part that,

"The Board has upheld the discharge of an employee who had falsified his employment application, irrespective of the elapsed time between the date of application and the date of discovery of falsification."

Claimant, contrawise, argues that inasmuch as the ankle injuries occurred in 1962 when he was thirteen (13) years of age and he had fully recovered within six weeks, that he did not associate these injuries with the information requested on the MED-2 Form. A letter submitted by his physician to Carrier's Medical Department dated June 17, 1976 confirmed this statement.

Our review of the record shows that claimant omitted to supply this information on the MED-2 Form. As such, it constituted a presumptive disciplinary offense. But unlike the many cases, where we have consistently affirmed carrier's right to terminate employees for falsifying employment applications or withholding pertinent data therefrom, the fact particulars underlying this situation provide a reasonable basis for concluding that claimant didn't manifest a purposeful intention to cover his prior condition.

Admittedly the pre-employment medical screening process is designed to insure that new employees are physically capable of performing their assigned tasks. Otherwise, Carrier would be confronted with unnecessary litigation, if accidents and injuries result from a person's medical condition. But the long time period that had elapsed between his ankle injuries in 1962 and the time he completed the MED-2 Form on August 6, 1973 strongly indicates that he wasn't trying to conceal these injuries. Instead it reflects an honest volitional judgment that the information wasn't needed, since he had fully recovered from his boyhood injuries.

Because of this finding and its distinguishable characteristics, we will reinstate claimant with his seniority unimpaired but without back pay, conditioned, of course, upon his passing a physical examination that additionally considers the physical condition of his ankles.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein, and

That the Agreement was violated.

A W A R D

Claim sustained to the extent expressed in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1979.